

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

IN RE: Richard A Napoleon and Beth Ann
Napoleon
Debtors,

Midwest Loan Services as servicer for
Ameriserv Financial Bank
Movant.

v.

Richard A Napoleon and Beth Ann Napoleon
Debtors/Respondents,

Ronda J. Winnecour, Trustee
Additional Respondent.

BANKRUPTCY CASE NUMBER
18-21009-JAD

CHAPTER 13

11 U.S.C. § 362

Objections due by: May 1, 2023

Docket #: _____

Related to Doc # _____

**MOTION OF MIDWEST LOAN SERVICES AS SERVICER FOR AMERISERV
FINANCIAL BANK
TO RECONSIDER AND VACATE THE ORDER GRANTING DEBTORS MOTION TO
ENFORCE CONFIRMATION ORDERS**

Secured Creditor, Midwest Loan Services as servicer for Ameriserv Financial Bank ("Movant"), by and through its undersigned counsel, pursuant to 11 U.S.C. §362, hereby seeks relief from the Order entered April 5, 2023 averring as follows:

1. Debtor named above filed a Voluntary Petition under Chapter 13 of the United States Bankruptcy Code in the Western District of Pennsylvania under the above case number.
2. Movant is the holder of a secured claim against Debtors, secured only by a first mortgage lien on real estate which is the principal residence of Debtors located at 140 Rustic Ridge Dr, Pittsburgh, PA 15239 (the "Mortgaged Premises").
3. On April 30, 2018, Movant filed a Proof of claim for a total debt of \$112,432.83 with arrears in the amount of \$12,220.16. The Proof of Claim stated as follows: **"As of the bankruptcy filing date, the regular BIWEEKLY contractual payment is 769.74** (comprised of principal and interest in the amount of \$483.05 and current escrow in the amount of \$286.69). **As of April 4, 1018, the regular BIWEEKLY contractual payment will be \$758.34** (comprised of principal and interest in the amount of \$483.05 and current escrow in the amount of \$275.29). This BIWEEKLY payment is subject to change in accordance with the terms of the Mortgage."

4. Arrears in the amount of \$12,220.16 set forth in the Proof of Claim filed on behalf of Movant were cured by payments from the Plan/Trustee..
5. Debtors filed a Chapter 13 Plan dated May 11, 2018, that provided for cure of the stated arrears through the Plan and that “ The debtor(s) will maintain the current contractual installment payments on the secured claims listed below, with any changes required by the applicable contract and noticed in conformity with any applicable rules.”
6. An Interim Order confirming the Plan was entered on June 19, 2018.
7. An Order confirming the Plan as Modified was entered on November 13, 2018.
8. On November 21, 2019, Debtor filed an Amended Plan to permit vehicle financing to Westlake Financial Services.
9. On April 7, 2021, the Plan was amended again to increase the amount of monthly payments from \$3,491.00 to \$3,578.00.
10. Movant filed Notice of Mortgage Payment Change on March 16, 2021 to notice the payment due of \$744.44 commencing May 12, 2021.
11. Movant filed Notice of Payment Changes on October 7, 2021 to notice the payment due of \$775.94 commencing November 1, 2021.
12. Movant filed Notice of Payment Change on September 28, 2022 to notice the payment due of 786.48 commencing November 9, 2022.
13. The Debtors failed to maintain current payments to Movant as promised and are currently due for the 2/2/2022 post-petition (biweekly) payment.
14. Debtor filed a Motion to Enforce Confirmation Orders on March 14, 2023, requesting that the Court issue an Order providing that the loan repayment for which is secured by the mortgage is current through March 2023 upon successful completion of the Debtor’s Plan.
15. Nothing in the confirmed Plan(s) established that Debtors were current on post-petition payments.
16. Nothing in the Confirmation Orders provided Debtors in fact were post-petition current.
17. Despite these facts, Debtors filed a Motion the enforce Confirmation Order, with findings that Debtors were post petition current through March 2023 without any bases in the confirmed Plans and without evidentiary hearing or facts to support that conclusion.
18. Movant failed to respond swiftly enough to the notice and, after a Certificate of No Response to the Motion to Enforce Confirmation Orders was filed on April 1, 2023, by default, the Order enforcing the Confirmation Orders was entered on April 5, 2023.

19. A final Amended Plan was filed January 25, 2023 to eliminate payments to Ally Financial, reduce payments to unsecured creditors and show reduced income to Richard Napoleon.
20. Movant had no objection to the Plan(s) of Debtors and therefore did not object to their confirmation.
21. The Plans do not provide basis for a factual finding that Debtors are post-petition current.
22. The Trustee Ledger does not establish Debtors are post-petition current.
23. Additional Respondent is the Standing Trustee appointed in this Chapter 13 proceeding.
24. The Order containing the finding that Debtors are post-petition current through March 2023 creates a windfall for Debtors to the extreme prejudice of Movant.
25. Movant apologizes for its delay in responding to the Motion to Enforce Confirmation Orders, but notes no party was prejudiced by the delay.

WHEREFORE, Movant respectfully moves this Court for an Order finding of “good cause” to reconsider and vacate the Order Enforcing the Confirmation Orders and granting all such other and further relief as the Court deems appropriate and necessary.

Respectfully submitted,

Dated: 4/14/23

BY: /s/Lorraine Gazzara Doyle
Christopher A. DeNardo 78447
Lorraine Gazzara Doyle 34576
LOGS Legal Group LLP
3600 Horizon Drive, Suite 150
King of Prussia, PA 19406
(610) 278-6800
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ORDER

AND NOW, this _____ day of _____, 2023, at the Western District of Pennsylvania, upon the consideration of the Motion of Midwest Loan Services as servicer for Ameriserv Financial Bank to Reconsider and Vacate the Order Granting Debtors Motion to Enforce Confirmation Orders and the Debtors Response thereto and for *good cause* shown, it is hereby

ORDERED AND DECREED that, upon reconsideration, the Order enforcing the Confirmation Orders IS VACATED without prejudice.

BY THE COURT:

HONORABLE JEFFERY A. DELLER
UNITED STATES BANKRUPTCY JUDGE

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CERTIFICATE OF SERVICE

I, the undersigned, an employee of the law firm of LOGS Legal Group LLP hereby certify that I caused to be served true and correct copies of the the Motion of Midwest Loan Services as servicer for Ameriserv Financial Bank to Reconsider and Vacate the Order granting Debtors Motion to Enforce Confirmation Orders by First Class Mail, postage prepaid, at the respective last known address of each person set forth below on this 14th day of April, 2023:

Richard A Napoleon
140 Rustic Ridge Dr
Pittsburgh, PA 15239

Beth Ann Napoleon
140 Rustic Ridge Dr
Pittsburgh, PA 15239

Glenn R. Bartifay, Esquire
2009 Mackenzie Way
Suite 100
Cranberry Township, PA 16066
gbartifay@bartifaylaw.com - VIA ECF

Ronda J. Winnecour, Trustee

Suite 3250, USX Tower
600 Grant Street
Pittsburgh, PA 15219
cmecf@chapter13trusteedpa.com - VIA ECF

United States Trustee
Sent via electronic notification ustpreion03.pi.ecf@usdoj.gov

I HEREBY CERTIFY UNDER PENALTY OF PERJURY THAT THE FOREGOING IS
TRUE AND CORRECT.

/s/ Lorraine Gazzara Doyle

Christopher A. DeNardo 78447
Lorraine Gazzara Doyle 34576
LOGS Legal Group LLP
3600 Horizon Drive, Suite 150
King of Prussia, PA 19406
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Docket #: _____

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NOTICE OF HEARING WITH RESPONSE DEADLINE
ON MOTION OF MIDWEST LOAN SERVICES AS SERVICER FOR AMERISERV
FINANCIAL BANK
TO RECONSIDER AND VACATE THE ORDER GRANTING DEBTORS' MOTION TO
ENFORCE CONFIRMATION ORDERS

TO THE RESPONDENTS:

You are hereby notified that the above Movant seeks an order affecting your rights or property.

You are further notified to file with the Clerk and serve upon the undersigned attorney for Movant a response to the motion no later than May 1, 2023, i.e. seventeen (17) days after the date of service below, in accordance with the Federal Rules of Bankruptcy Procedure, Local Rules and Procedures of this Court, and the procedures of the Presiding Judge as found on the Judge's web page at www.pawb.uscourts.gov. If you fail to timely respond, the Motion may be granted by the Court by default without a hearing.

You should take this to your lawyer at once.

A hearing will be held on May 24, 2023 at 10:30 a.m. before Judge Deller in Penn Traffic Building 319 Washington Street, First Floor, Courtroom B, Johnstown, PA 15901. Only a limited time of 10 minutes is being provided on the calendar. No witnesses will be heard. If there is an issue of fact, an evidentiary hearing will be scheduled at a later date by the Court. An order granting the relief sought may be entered and the hearing may not be held if you do not timely file and serve a written response.

/s/ Lorraine Gazzara Doyle

Christopher A. DeNardo 78447

Lorraine Gazzara Doyle 34576

LOGS Legal Group LLP

Attorney for Movant

3600 Horizon Drive, Suite 150

King of Prussia, PA 19406

(610) 278-6800

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CERTIFICATE OF SERVICE

I, Lorraine Gazzara Doyle, an employee of the law firm of LOGS Legal Group LLP hereby certify that I caused to be served true and correct copies of the Notice of Hearing by First Class Mail, postage prepaid, at the respective last known address of each person set forth below on this 14th day of April, 2023:

Richard A Napoleon
140 Rustic Ridge Dr
Pittsburgh, PA 15239

Beth Ann Napoleon
140 Rustic Ridge Dr
Pittsburgh, PA 15239

Glenn R. Bartifay, Esquire
2009 Mackenzie Way
Suite 100
Cranberry Township, PA 16066
gbartifay@bartifaylaw.com - VIA ECF

Ronda J. Winnecour, Trustee
Suite 3250, USX Tower
600 Grant Street
Pittsburgh, PA 15219
cmecf@chapter13trusteewdpa.com - VIA ECF

United States Trustee

Sent via electronic notification ustpreion03.pi.ecf@usdoj.gov

I HEREBY CERTIFY UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

/s/Lorraine Gazzara Doyle

Christopher A. DeNardo 78447

Lorraine Gazzara Doyle 34576

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